

ASSEMBLY BILL

No. 625

Introduced by Assembly Member Quirk

February 20, 2013

An act to amend Section 1185 of the Civil Code, and to amend Section 8230 of the Government Code, relating to notaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 625, as introduced, Quirk. Notaries Public: acceptance of identification.

(1) Existing law relating to property transfers specifies certain documents as allowable forms of identification for a credible witness, who, by oath or affirmation, attests to the identity of an individual executing a written instrument in the presence of, and acknowledged by, a notary public. Existing law specifies that an inmate identification card that is current or has been issued within 5 years by the Department of Corrections and Rehabilitation if the inmate is in custody is an allowable form of identification, for purposes of these provisions, if it contains certain identifying information, including a photograph and description of the person named on it, is signed by the person, and has a serial or other identifying number.

This bill would make that inmate identification card without that additional identifying information an allowable form of identification for a credible witness to prove the identity of an individual who executes a written instrument.

(2) Existing law requires a notary public when notarizing a document that purports to identify the affiant, as specified, to verify the affiant's identity using either a certified copy of the person's birth certificate or

an identification card or a driver's license issued by the Department of Motor Vehicles.

This bill would also authorize a notary public to accept as verification, an inmate identification card issued by the Department of Corrections and Rehabilitation, if the inmate is in custody.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) The state and its counties have a financial and public safety
3 interest in ensuring the children of people convicted of felonies
4 and sentenced to state prison time have access to appropriate
5 schooling and medical treatment. Eighty percent of imprisoned
6 women are mothers and the vast majority were the primary care
7 provider of minor children at the time of their arrest and
8 imprisonment. These minor children's access to school and medical
9 treatment may be unnecessarily interrupted should their
10 incarcerated parent lack timely and affordable access to a notary
11 necessary for them to complete paperwork to establish temporary
12 guardianship for their children.

13 (b) The state and its counties have a financial and public safety
14 interest in ensuring people convicted of felonies and sentenced to
15 state prison time are able to successfully reenter their communities
16 upon completion of their sentences and live a crime-free life.
17 Evidence-based research demonstrates a clear connection between
18 decreased recidivism rates and strength of familial bonds during
19 periods of incarceration. These bonds are weakened when minor
20 children are unnecessarily prevented from visiting incarcerated
21 parents due merely to the incarcerated parents' lack of timely and
22 affordable access to a notary public required to complete required
23 visitation forms.

24 (c) The state has taken significant measures to assure due process
25 and accuracy in determining the identity of people convicted of
26 felonies and held in control of the Department of Corrections and
27 Rehabilitation, and in tracking these individuals' appropriate
28 identity through issuance and monitoring of state inmate
29 identification cards.

30 SEC. 2. Section 1185 of the Civil Code is amended to read:

1 1185. (a) The acknowledgment of an instrument shall not be
2 taken unless the officer taking it has satisfactory evidence that the
3 person making the acknowledgment is the individual who is
4 described in and who executed the instrument.

5 (b) For purposes of this section “satisfactory evidence” means
6 the absence of information, evidence, or other circumstances that
7 would lead a reasonable person to believe that the person making
8 the acknowledgment is not the individual he or she claims to be
9 and any one of the following:

10 (1) (A) The oath or affirmation of a credible witness personally
11 known to the officer, whose identity is proven to the officer upon
12 presentation of a document satisfying the requirements of paragraph
13 (3) or (4), that the person making the acknowledgment is personally
14 known to the witness and that each of the following are true:

15 (i) The person making the acknowledgment is the person named
16 in the document.

17 (ii) The person making the acknowledgment is personally known
18 to the witness.

19 (iii) That it is the reasonable belief of the witness that the
20 circumstances of the person making the acknowledgment are such
21 that it would be very difficult or impossible for that person to
22 obtain another form of identification.

23 (iv) The person making the acknowledgment does not possess
24 any of the identification documents named in paragraphs (3) and
25 (4).

26 (v) The witness does not have a financial interest in the
27 document being acknowledged and is not named in the document.

28 (B) A notary public who violates this section by failing to obtain
29 the satisfactory evidence required by subparagraph (A) shall be
30 subject to a civil penalty not exceeding ten thousand dollars
31 (\$10,000). An action to impose this civil penalty may be brought
32 by the Secretary of State in an administrative proceeding or a public
33 prosecutor in superior court, and shall be enforced as a civil
34 judgment. A public prosecutor shall inform the secretary of any
35 civil penalty imposed under this subparagraph.

36 (2) The oath or affirmation under penalty of perjury of two
37 credible witnesses, whose identities are proven to the officer upon
38 the presentation of a document satisfying the requirements of
39 paragraph (3) or (4), that each statement in paragraph (1) is true.

(3) Reasonable reliance on the presentation to the officer of any one of the following, if the document is current or has been issued within five years:

(A) An identification card or driver's license issued by the Department of Motor Vehicles.

(B) A passport issued by the Department of State of the United States.

(C) An inmate identification card issued by the Department of Corrections and Rehabilitation if the inmate is in custody.

(4) Reasonable reliance on the presentation of any one of the following, provided that a document specified in subparagraphs (A) to ~~(F)~~ (E), inclusive, shall either be current or have been issued within five years and shall contain a photograph and description of the person named on it, shall be signed by the person, shall bear a serial or other identifying number, and, in the event that the document is a passport, shall have been stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security:

(A) A passport issued by a foreign government.

(B) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue driver's licenses.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the Armed Forces of the United States.

~~(E) An inmate identification card issued on or after January 1, 1988, by the Department of Corrections and Rehabilitation, if the inmate is in custody.~~

~~(F)~~

(E) An employee identification card issued by an agency or office of the State of California, or by an agency or office of a city, county, or city and county in this state.

~~(G) An inmate identification card issued prior to January 1, 1988, by the Department of Corrections and Rehabilitation, if the inmate is in custody.~~

(c) An officer who has taken an acknowledgment pursuant to this section shall be presumed to have operated in accordance with the provisions of law.

(d) A party who files an action for damages based on the failure of the officer to establish the proper identity of the person making

1 the acknowledgment shall have the burden of proof in establishing
2 the negligence or misconduct of the officer.

3 (e) A person convicted of perjury under this section shall forfeit
4 any financial interest in the document.

5 SEC. 3. Section 8230 of the Government Code is amended to
6 read:

7 8230. If a notary public executes a jurat and the statement
8 sworn or subscribed to is contained in a document purporting to
9 identify the affiant, and includes the birthdate or age of the person
10 and a purported photograph or finger or thumbprint of the person
11 so swearing or subscribing, the notary public shall require, as a
12 condition to executing the jurat, that the person verify the birthdate
13 or age contained in the statement by showing ~~either~~ *any of the*
14 *following*:

15 (a) A certified copy of the person's birth certificate, or

16 (b) An identification card or driver's license issued by the
17 Department of Motor Vehicles.

18 (c) *An inmate identification card issued by the Department of*
19 *Corrections and Rehabilitation, if the inmate is in custody.*

20 For the purposes of preparing for submission of forms required
21 by the United States Immigration and Naturalization Service, and
22 only for such purposes, a notary public may also accept for
23 identification any documents or declarations acceptable to the
24 United States Immigration and Naturalization Service.